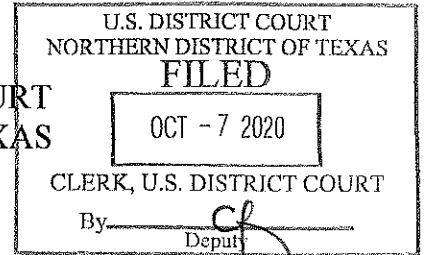


IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION



UNITED STATES OF AMERICA

v.

NO. 5:20-CR-128-H

MARCUS ANTHONY BRAZIEL

FACTUAL RESUME

In support of Marcus Anthony Braziel's plea of guilty to the offenses in Counts One and Two of the Information, Braziel, the defendant, Daniel W. Hurley, the defendant's attorney, and the United States of America (the government) stipulate and agree to the following:

ELEMENTS OF THE OFFENSE

To prove the offense alleged in Count One of the Information, charging a violation of 18 U.S.C. §§ 922(a)(1)(A), 923(a), 924(a)(1)(D), that is, Dealing and Manufacturing Firearms Without a License, the government must prove each of the following elements beyond a reasonable doubt:¹

First: That the defendant was a person engaged in the business of selling or manufacturing firearms at wholesale or retail on the dates listed in the information;

Second: That the defendant engaged in such business without a license issued under federal law; and

Third: That the defendant did so willfully, that is, that the defendant was dealing in firearms with knowledge that his conduct was unlawful.

¹ Fifth Circuit Pattern Jury Instruction 2.43A (5th Cir. 2019).

The term “firearm” means any weapon which will or is designed to or may readily be converted to expel a projectile by the action of an explosive. The term “firearm” also includes the frame or receiver of any such weapon, or any firearm muffler or firearm silencer, or destructive device.

A person is “engaged in the business of selling firearms at wholesale or retail,” if that person devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principle objective of livelihood and profit through the repetitive purchase and resale of firearms. Such term does not include a person who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of that person’s personal collection of firearms.

The term “with the principle objective of livelihood and profit” means that the intent underlying the sale or disposition of firearms is predominantly one of obtaining livelihood and pecuniary gain, as opposed to other intents, such as improving or liquidating a personal firearms collection. However, proof of profit is not required as to a person who engages in the regular and repetitive purchase and disposition of firearms for criminal purposes or terrorism.

To prove the offense alleged in Count Two of the Information, charging a violation of 26 U.S.C. § 7206(1), that is, Subscribing to a False Tax Return, the government must prove each of the following elements beyond a reasonable doubt:²

First: That the defendant signed an income tax return that contained a written declaration that it was made under penalties of perjury;

Second: That in this return the defendant falsely stated that the defendant had no business income or loss during tax year 2016;

Third: That the defendant knew the statement was false;

Fourth: That the false statement was material; and

² Fifth Circuit Pattern Jury Instruction 2.104A (5th Cir. 2019).

Fifth: That the defendant made the statement willfully, that is, with intent to violate a known legal duty.

A statement is “material” if it has a natural tendency to influence, or is capable of influencing, the Internal Revenue Service in investigating or auditing a tax return or in verifying or monitoring the reporting of income by a taxpayer.

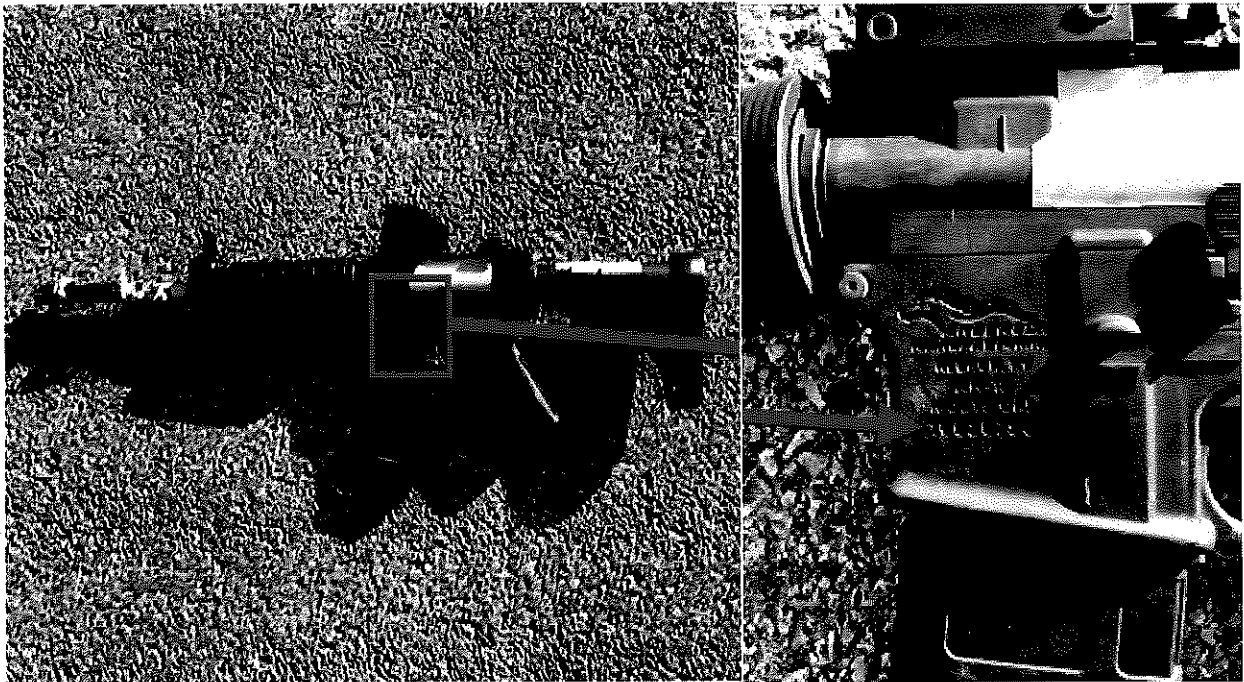
STIPULATED FACTS

1. Marcus Anthony Braziel admits and agrees that from in or about 2014 to in or about 2018, in the Lubbock Division of the Northern District of Texas, and elsewhere, he, not being a licensed dealer or manufacturer of firearms within the meaning of Chapter 44, Title 18, United States Code, did willfully engage in the business of dealing in and manufacturing firearms, in violation of Title 18, United States Code, Sections 922(a)(1)(A), 923(a), and 924(a)(1)(D).

2. Marcus Anthony Braziel admits and agrees that on or about April 13, 2017, in the Lubbock Division of the Northern District of Texas, and elsewhere, he, a resident of Lubbock, Texas, did willfully make and subscribe to a U.S. Individual Income Tax Return for the calendar year 2016, which was verified by a written declaration that it was made under penalties of perjury and which he did not believe to be true and correct as to every material matter. That income tax return, which was filed with the Internal Revenue Service reported no business income or loss, whereas, as he then and there well knew, he received \$3,800 from the sale of firearms. In violation of Title 26, United States Code, Section 7206(1).

3. On August 31, 2019, Seth Aaron Ator committed a mass shooting in Midland and Odessa, Texas, killing seven people and wounding another 25 people.

Special Agents with the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) identified the firearm used in the mass shooting as an Anderson Manufacturing AM-15, 5.56x45mm semi-automatic rifle, bearing serial number 16020756:



4. ATF traced the firearm to Marcus Anthony Braziel, who had purchased the firearm through Mulehead Dan's Firearms, 6006 15th Street, Lubbock, Texas, on March 21, 2016. Braziel had purchased the "firearm" as a lower receiver and it was one of three lower receivers purchased by Braziel on that date:

26. Manufacturer and/or Importer (If the manufacturer and importer are different, the FFL should include both.)	27. Model	28. Serial Number	29. Type (pistol, revolver, rifle, shotgun, receiver, frame, etc.) (See instructions for question 29)	30. Caliber or Gauge
ANDERSON MAHUF	AM-15	160 207 56	Lower Receiver	MULTI
ANDERSON MAHUF	AM-15	160 666 35	Lower Receiver	MULTI
ANDERSON MAHUF	AM-15	160 207 55	Lower Receiver	MULTI
30a. Total Number of Firearms (Please handwrite by printing e.g., one, two, three, etc. Do not use numerals.)			30b. Is any part of this transaction a Pawn Redemption? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
THREE				
30c. For Use by FFL (See Instructions for Question 30c.)				

Complete ATF Form 3310.4 For Multiple Purchases of Handguns Within 5 Consecutive Business Days

31. Trade/corporate name and address of transferor (seller). (Hand stamp may be used.)	32. Federal Firearms License Number (Must contain at least first three and last five digits of FFL Number X-XX-XXXXX.) (Hand stamp may be used.)
Mulehead Dan's Firearms 6006 15th St. Lubbock, TX 79416	5-75-303-01-7B-05816

A sample lower receiver is pictured below:



Braziel had sold the firearm to Ator on October 8, 2016.

5. On September 1, 2019, ATF investigators interviewed the owner of Mulehead Dan's about Braziel's firearm purchases. ATF investigators learned that

between June 3, 2014, and October 3, 2017, Braziel had purchased 50 AR-15 lower receivers, 10 pistols, and three rifles through Mulehead Dan's.

6. On September 16, 2019, ATF investigators spoke with the owner of Mulehead Dan's. ATF investigators asked the owner if he knew what Braziel was doing with the AR-15 lower receivers that he transferred to him. The owner said that he knew Braziel would get them, build them, and then sell them. The owner said he asked Braziel if he could do that and Braziel said that he could "as long as it's not your main source of income." The owner said that he remembered the law changed on dealing in firearms a couple of years ago and he e-mailed Braziel about it asking, "This going to change what you're doing?"

7. On September 17, 2019, ATF investigators returned to speak to the owner of Mulehead Dan's. The owner agreed to surrender his federal firearms license to the ATF.

8. On September 1, 2019, ATF investigators interviewed Braziel. Braziel stated that he did not have a federal firearms license, but he had previously held an ATF Curio and Relics license. Braziel stated that he thought he had about 7 or 8 of the 51 lower receivers he had purchased through Mulehead Dan's. Braziel said that he and a family member would buy them, build them, play with them, and then sell them when they were finished. Braziel classified his activities as a "hobby." Braziel said that he had nine firearm bills of sale in his possession. Braziel said his remaining bills of sale were stored in his cell phone, but he had accidentally dropped that cell phone in the lake and lost them. Braziel said that he typically sold AR-15 style rifles for \$500-700. Braziel

said it typically cost about \$400-500 to build the AR-15-style rifles (in a later meeting, Braziel clarified that this was the cost for a completed rifle and did not include costs associated with hydro-dipping or accessories). Braziel said that he typically conducted firearms sales at the garage of his residence or the parking lot of Academy Sports and Outdoors. Braziel said that he typically posted his firearms on Armslist.com to sell them. Braziel turned over the nine bills of sale to ATF agents, including the one to Ator (redacted copy below):

FIREARM BILL OF SALE	
Buyer certifies that they are not restricted or prohibited by law to own a firearm and buyer states that he/she:	
<ul style="list-style-type: none"> Has NEVER been convicted in any court of a crime punishable by imprisonment for a term exceeding 1 year. Is NOT a fugitive from justice. Is NOT an unlawful user of or addicted to any controlled substance. Has NEVER been adjudicated as a mental defective or has been committed to a mental institution. Is NOT an alien illegally or unlawfully in the United States or is not admitted to the United States under a nonimmigrant visa. Has NOT been ordered by a court of law to refrain from contact with any individual. Is NOT a person who is under indictment or information for a crime punishable by imprisonment for a term exceeding 1 year. 	
<input type="button" value="Print Form"/>	
I truthfully state that I AM NOT a person who cannot legally buy, receive, and possess firearms and/or ammunition.	
Full Name: <u>Seth Aaron</u> Signature: <u>[Signature]</u>	
Firearm(s) sold:	
Make: <u>Anderson</u> Model: <u>AR-15</u> Caliber: <u>5.56/223</u> S/N: <u>16020256</u> Cost: <u>750.00</u>	
Make: _____ Model: _____ Caliber: _____ S/N: _____ Cost: _____	
Make: _____ Model: _____ Caliber: _____ S/N: _____ Cost: _____	
Buyer (NAME) <u>Seth Aaron</u>	Seller (NAME) <u>Marcus Braziel</u>
ADDRESS <u>P.O. Box 13494</u> <u>Odessa, TX</u>	ADDRESS <u>6306 Dupage Ave.</u> <u>Lubbock, TX 79416</u>
DOB <u>18753634</u>	ID# <u>TX15563231</u>
CELL <u>432-234-3648</u>	CELL <u>(808) 928-0023</u>
I understand the firearm is sold AS-IS and no warranty has been implied or given. Firearm should be inspected by a competent gunsmith prior to using. Seller not responsible for any damages incurred or caused by the use of this firearm.	
Sale Date: <u>10/8/16</u>	
Sale Conditions: <u>As-Is</u>	
Buyer Signature: <u>[Signature]</u>	Seller Signature: <u>[Signature]</u>

ATF agents took the bills of sale to its office to make copies of them. They then returned to Braziel's residence to give him the originals that same day. After ATF agents returned the bills of sale to Braziel, Braziel said that what had happened was "tearing [him] up inside." Braziel said that he had quit selling firearms because he felt he "had got pretty deep in the hobby" and that he had gotten "obsessive about it." Braziel stated that he "never in a million years thought" that one of his firearms would be used in a mass shooting.

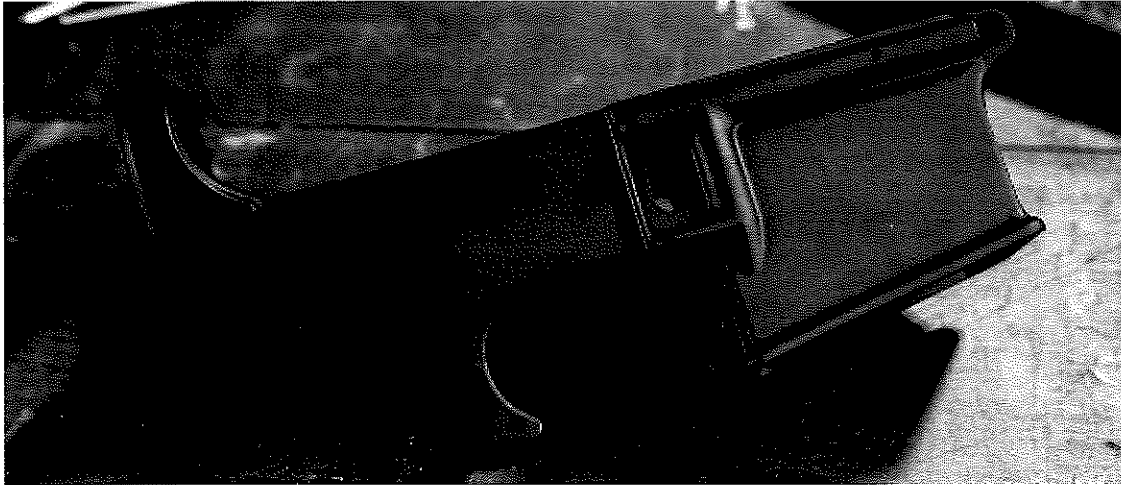
9. Braziel allowed ATF agents to examine the firearms in his possession. ATF agents were unable to locate any of the 51 lower receivers that Braziel had purchased through Mulehead Dan's.

10. On September 4, 2019, ATF agents executed a search warrant at Braziel's residence in Lubbock. ATF agents seized 29 firearms (one was a lower receiver) from Braziel's residence. They also seized several electronic devices.

11. Agents with the ATF, Federal Bureau of Investigation, Internal Revenue Service-Criminal Investigations Division, and the United States Postal Inspection Service, combined to conduct a joint investigation of Braziel's firearms sales. Federal law enforcement agents obtained numerous search warrants, grand jury subpoenas, and other legal process to obtain financial records and other information regarding Braziel's sale of firearms. The information contained in this factual resume comes from the evidence obtained through that legal process.

12. Federal agents found that Braziel had purchased 94 firearms from federal firearms licensees during his lifetime. Additionally, Braziel purchased 15 80% lower

receivers, which are not considered a “firearm” under federal law and therefore have no serial number and are not required to be sold through a federal firearms licensee. A photograph of a sample 80% lower receiver is below:



Accordingly, Braziel obtained about 97 firearms or 80% lower receivers and retained possession of 29 of those firearms as of September 4, 2019.

13. Braziel advertised his firearms for sale on Armslist.com and Texasguntrader.com.

14. During a computer forensic analysis of Braziel’s laptop computer, agents located the following items, all created in January 2015 and in close proximity to one another: “The Gunsmith Handbook”; “Start Your Own Business – The Staff of Entrepreneur Media, Inc.”; “Learn Gunsmithing – The Troubleshooting Method – American Gunsmith”; “The Business Book (Big Ideas Simply Explained)”; and “The 200 Best Home Businesses Easy to Start, Fun to Run, Highly Profitable”. Agents also found text messages from various individuals asking questions such as: “Hey man, you still building guns?” and “Where do you have your guns listed at?”.

15. Agents examined the nine firearm bills of sale provided by Braziel and determined that he sold the firearms within an average of about 110 days of purchasing them from the federal firearms licensee: J.R.L. – 67 days; A.T.B. – 195 days; A.B.I. – 44 days and 87 days; A.K.M. – 105 days; V.B. – 25 days; S.A.A. – 202 days; A.M. – 68 days; T.N. – 198 days; S.S. – undeterminable.

16. Agents conducted a financial analysis of Braziel's bank accounts. They noted that from calendar years 2014-2017, Braziel had deposits in excess of the wages that he claimed on his federal income tax return. Agents found that almost all of Braziel's firearms sales were done in cash. Agents were able to identify the following amounts of cash deposits:

CALENDAR YEAR	CASH DEPOSITS ONLY
2014	\$11,580.00
2015	\$21,700.00
2016	\$6,100.00
2017	\$10,000.00
TOTAL	\$49,380.00

However, these cash deposits are not solely as a result of the sale of firearms and includes amounts from other items sold by Braziel.

17. Agents discovered that Braziel had milling equipment set up so that he could manufacture AR-15-style rifles and 1911-style pistols from 80% components. Braziel posted this mill for sale on Craigslist on October 10, 2017, and it was sold:

PostingBody

Here is a Mill with vice bolted to a work table. I have several 3/8" mill bits along with 58pc 7/16" Slot ,3/8" Stud HOLD DOWN CLAMP CLAMPING SET KIT. I also have 80% lower jig and a 1911 jig set-up that I will include with it. Everything works as it should and is set up for 80% lowers. I have well over 1k in this set-up. I also have some paperweights that already have the rear pockets reamed out. I would be willing to negotiate a little on them if you want to try your hand at milling them. I am open to trades of items of equal value.

18. ATF records confirmed that Braziel was not a federal firearms licensee. On April 1, 2014, Braziel signed his Curios and Relics license, but that license explicitly stated that he could not engage in the business of dealing in firearms with that license:

U.S. Department of Justice Bureau of Alcohol, Tobacco, Firearms and Explosives		FEDERAL FIREARMS LICENSE (18 U.S.C. Chapter 44)	
In accordance with the provisions of Title I, Gun Control Act of 1968, and the regulations issued thereunder (27 CFR Part 478), this license is not transferable under 27 CFR 478.91. See "WARNINGS" and "NOTICES".			
Direct ATF Correspondence To ATF - Chief, FFLC 244 Neady Road Martinsburg, WV 25405-9431		License Number 5-75-3	THIS LICENSE DOES NOT AUTHORIZE THE HOLDER TO ENGAGE IN THE BUSINESS OF DEALING IN ANY FIREARMS.
Chief, Federal Firearms Licensing Center (FFLC) <i>Nancy Robinson</i>		Expiration Date A	
Name BRAZIEL, MARCUS A		Licensee/Responsible Person Signature <i>Marcus A. Braziel</i> Printed Name MARCUS BRAZIEL	
Premises Address (Change? Notify the FFLC at least 30 days before the move.) 6306 DUPAGE AVE LUBBOCK, TX 79416		Position/Title Collector Date 4/1/14	
Type of License 03 - COLLECTOR OF CURIOS AND RELICS			
<div> <div> Purchasing Certification Statement The licensee named above shall use a copy of this license to assist a transferee of curio or relic firearms in verifying the identity and the licensed status of the licensee as provided by 27 CFR Part 478. The transferee on each copy must be an original signature. A faded, scanned, or e-scanned copy of the license with a signature intended to be an original signature is unacceptable. The signature must be that of the Federal Firearms Licensee (FFLC). I certify that this is a true copy of a license issued to the licensee named above as a collector of curio and relic and that THIS LICENSE DOES NOT AUTHORIZE THE HOLDER TO ENGAGE IN THE BUSINESS OF DEALING IN ANY FIREARMS. </div> <div> Mailing Address (Change? Notify the FFLC of any changes) BRAZIEL, MARCUS A 6306 DUPAGE AVE LUBBOCK, TX 79416 </div> </div>			
<i>Marcus A. Braziel</i> Licensee/Responsible Person Signature <i>Marcus Braziel</i> Printed Name		Collector Position/Title 4/1/14 Date	

19. Agents were able to identify four firearms transactions conducted by Braziel where he sold firearms to prohibited individuals: (1) A.K.M. – Under felony indictment at time of sale; (2) R.G. - convicted felon; (3) S.A.A. - Adjudicated Mentally Defective; (4) J.W. - citizen of Mexico illegally present in the United States. There is no evidence that Braziel knew these individuals were prohibited when he sold the firearms to them.

20. On April 13, 2017, Marcus Braziel signed his 2016 Form 1040, United States Income Tax Return Form. That Form contained a written declaration that it was made under penalties of perjury. In line 12 of that return, Braziel claimed that he did not have any Business Income or Loss. Braziel knew that statement was false because in tax year 2016, he received \$3,800 in gross income from his sale of firearms, as evidenced by the bills of sale that he provided to ATF agents. This false statement was material because if he had disclosed his gross income from the sale of firearms, it has a natural tendency to influence, or is capable of influencing, the Internal Revenue Service in investigating or auditing a tax return or in verifying or monitoring the reporting of income by a taxpayer. Braziel made this statement willfully, with intent to violate a known legal duty. On January 9, 2019, an individual sent a text message to Marcus BRAZIEL asking, “How did you sell guns on your website with out taxes?” Braziel replied, “Very carefully” followed by four winking emojis.

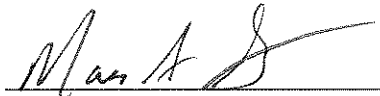
21. The parties agree and stipulate that there is no resulting tax loss to the United States from Braziel’s sale of firearms for the calendar years 2014-2018.

22. Braziel admits that he was a person engaged in the business of selling or manufacturing firearms at wholesale or retail from in or about 2014 to in or about 2018. Braziel admits that he engaged in such business without a license issued under federal law. Braziel admits that he did so willfully, that is, that he was dealing in or manufacturing firearms with knowledge that his conduct was unlawful.

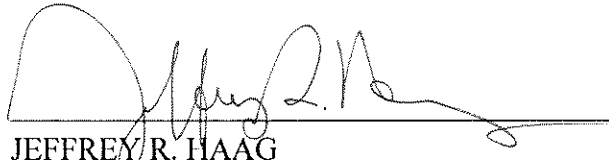
23. Braziel admits that he signed a U.S. Individual Income Tax Return for the calendar year 2016 that contained a written declaration that it was made under penalties of perjury. Braziel admits that in this return the defendant falsely stated that he had no business income or loss during tax year 2016. Braziel admits that he knew the statement was false because he had received \$3,800 gross income from the sale of firearms. Braziel admits that the false statement was material and that he made the statement willfully, that is, with intent to violate a known legal duty.

AGREED TO AND STIPULATED on this 21st day of September, 2020.

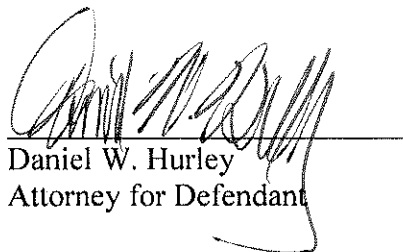
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